

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TROY ANTHONY FRANCIS GORDON
(A 34-155-714),

Petitioner,

v.

ORDER
08-CV-508S

MARTIN HERRON, et al.,

Respondents.

1. On or about July 9, 2008, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2241. (Docket No. 1.) On November 12, 2008, Petitioner filed a Motion for Expedited Hearing. (Docket No. 11.) Thereafter, on November 24, 2008, this Court referred this case to the Honorable Hugh B. Scott, United States Magistrate Judge, for the issuance of a Report and Recommendation. (Docket No. 12.)

2. In a Report and Recommendation filed on January 14, 2009, Judge Scott recommends that the Petition for Writ of Habeas Corpus be denied, and that Petitioner's Motion for Expedited Hearing be denied as moot. (Docket No. 13.) Petitioner filed objections to Judge Scott's Report and Recommendation on February 26, 2009 (Docket No. 16), to which Respondents responded on March 30, 2009 (Docket No. 20.) This Court took Petitioner's objections under advisement without oral argument.

3. This Court has carefully reviewed Judge Scott's Report and Recommendation, Petitioner's objections thereto, and the pleadings and materials

submitted by the parties, and concurs with Judge Scott's determinations. Accordingly, the Report and Recommendation will be accepted.

IT HEREBY IS ORDERED, that this Court ACCEPTS Judge Scott's Report and Recommendation (Docket No. 13) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket No. 16) are DENIED.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DISMISSED with prejudice, there not having been a substantial showing of the denial of a constitutional right.

FURTHER, that Petitioner's Motion for Expedited Hearing (Docket No. 11) is DENIED as moot.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Coppedge v. United States, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).

FURTHER, that the petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

FURTHER, that a certificate of appealability will not issue.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: March 30, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge